

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-17-0017
RULES 67(C) AND 67.2,	)	
ARIZONA RULES OF FAMILY	)	
LAW PROCEDURE	)	
	)	<b>FILED 08/31/2017</b>
_____	)	

**ORDER**

**ABROGATING RULE 67(C) AND ADDING RULE 67.2, ARIZONA RULES OF FAMILY  
LAW PROCEDURE**

A petition having been filed proposing to abrogate Rule 67(C), Arizona Rules of Family Law Procedure, and add new Rule 67.2, Arizona Rules of Family Law Procedure, and no comments having been received, upon consideration,

**IT IS ORDERED** that Rule 67(C), Arizona Rules of Family Law Procedure, be abrogated, and that new Rule 67.2, Arizona Rules of Family Law Procedure, be added, in accordance with the attachment hereto, effective January 1, 2018.

DATED this 31st day of August, 2017.

\_\_\_\_\_  
/s/  
SCOTT BALES  
Chief Justice

TO:

Rule 28 Distribution

Barbara Atwood

Timothy Berg

Lisa M Panahi

## ATTACHMENT

### ARIZONA RULES OF FAMILY LAW PROCEDURE

#### **Rule 67. Mediation, ~~Arbitration~~, Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services<sup>1</sup>**

**A. – B. [No change in text.]**

**~~C. Arbitration.~~** ~~The parties may agree to arbitrate any and all issues in accordance with the Arizona Arbitration Act, A.R.S. §§ 12-1501 to 1518 or any other law permitting arbitration. The parties or counsel, if any, shall file with the court a written notice of their agreement to arbitrate some or all of the issues before the court, attaching their written agreement to arbitrate, stating the name of the arbitrator(s), and the date(s) of arbitration. The decision of the arbitrator(s) shall be submitted to the court for a determination that said decision conforms to statute for entry of a decree or other written orders in accordance therewith. The parties shall contract directly with the arbitrator(s) and be responsible for payment of any fees for such arbitration.~~

**CD. Settlement Conferences.** Upon motion of any party, or upon the court's own motion, the court may direct the parties to attend a settlement conference. Upon agreement of the parties, the settlement conference may be conducted by the judge or commissioner presiding over the action. The court may direct that the settlement conference be conducted by another judge or commissioner of the court, or by a judge pro tempore as part of any ADR program overseen, administered, or authorized by the court.

1. *Procedures.* At the request of a party or on its own motion, the court may direct the parties, the attorneys for the parties, and any other person deemed necessary to facilitate settlement of the issues, to participate in the settlement conference. The court may enter an order setting the date for the conference and enter other orders appropriate under the circumstances of the case to facilitate the settlement conference.

2. *Memoranda.* Except as otherwise ordered by the court, at least one week before the settlement conference the parties shall furnish the settlement conference officer with their Settlement Conference Memoranda or a Pretrial Statement addressing the following:

- a. a general description of the issues in dispute, the party's position on each issue and the evidence that will be presented to support the party's position;
- b. where the issues involve financial matters, the memorandum shall include a current Affidavit of Financial Information, a list of outstanding debts and the party responsible for each debt, and an inventory of community or joint assets, including dates of acquisition, amounts of encumbrance, and present value;
- c. a summary of the negotiations that have previously occurred; and
- d. any other information the party believes will be helpful to the settlement of the issues.

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<sup>1</sup> Changes or additions in Rule 67 text are indicated by underscoring and deletions from text are indicated by strikeouts.

The Settlement Conference Memorandum shall not be filed with the court.

3. *Ex Parte Communication.* At any settlement conference conducted pursuant to this rule, the court, with consent of all those participating in the conference, may engage in *ex parte* communication with the parties if the court determines that will facilitate the settlement of the case.

4. *Domestic Violence.* At the request of a party or on the court's own motion, in cases where there has been domestic violence between the parties, the court shall put reasonable procedures in place to protect the victim from harm, harassment, or intimidation.

5. *Agreements.* Any binding agreement that is reached by the parties shall comply with Rule 69. As part of any agreement reached, the parties shall acknowledge that the agreement was entered into by them voluntarily and without threat or undue influence after full disclosure of all relevant facts and information, that it is intended to be a final binding agreement pursuant to these rules, and that it is fair, equitable, and where there are minor children common to the parties, is in the best interests of the children. The judge, commissioner, or judge pro tempore conducting the settlement conference shall make any findings necessary to approve the agreement pursuant to A.R.S. § 25-317 and may sign any Decree of Dissolution presented that conforms to the agreements reached by the parties. Any Decree of Dissolution signed by a judge pro tempore in accordance with this rule shall have the same force and effect as a Decree signed by the judge or commissioner to whom the case is assigned.

6. *Failure to Appear.* The parties and counsel, if any, shall be required to appear in person at all settlement conferences scheduled. The court may impose sanctions as permitted by Rule 71 for failing to appear and participate in the settlement conference.

7. *Reports to the Court.* If no or partial agreement is reached in the settlement conference, the settlement conference judge or commissioner shall file a brief report with the court stating that the parties met and attempted to resolve their differences, but the settlement conference was unsuccessful. The report shall also state any agreements reached and the issues remaining for resolution. The settlement conference judge shall not report the positions of the parties and shall not comment upon or offer any opinion about the position of any party. The settlement conference judge or commissioner may also advise the court if the parties or the settlement conference judge or commissioner believe that a further settlement conference would be helpful to resolving the remaining issues.

**DE. Other Dispute Resolution Processes; Fees.** The court may establish, approve, or administer other dispute resolution processes designed to assist the parties in resolving disputes without litigation through contested proceedings. Participants in an ADR service provided through the court may be charged a fee in accordance with the law.

## **New Rule 67.2. Uniform Family Law Arbitration Rule<sup>2</sup>**

### **A. Definitions.** In this rule:

(1) “Arbitration agreement” means an agreement that subjects a family law dispute to arbitration.

(2) “Arbitration organization” means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator.

(3) “Arbitrator” means an individual selected, alone or with others, to make an award in a family law dispute that is subject to an arbitration agreement.

(4) “Child-related dispute” means a family law dispute regarding legal decision-making, parenting time, visitation, or financial support regarding a child.

(5) “Court” means the Superior Court of Arizona.

(6) “Family law dispute” means a contested issue arising under Title 25 of the Arizona Revised Statutes and within the scope of the Arizona Rules of Family Law Procedure.

(7) “Party” means an individual who signs an arbitration agreement and whose rights will be determined by an award.

(8) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

(9) “Record,” used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(11) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

### **B. Scope.**

(1) This rule governs arbitration of a family law dispute.

(2) This rule does not authorize an arbitrator to make an award that:

(a) grants a legal separation, dissolution of marriage, or annulment;

(b) grants a guardianship of a child or incapacitated adult; or

(c) grants an adoption, terminates parental rights, or determines dependency or other status of a child under Title 8 of the Arizona Revised Statutes.

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<sup>2</sup> Because Rule 67.2 is an entirely new rule, the text is not underlined.

**C. Applicable law.**

(1) Family law arbitration shall be conducted according to A.R.S. §§ 12-3001 through 3029, as supplemented by this Rule.

(2) In determining the merits of a family law dispute, an arbitrator shall apply the law of this state, including its choice of law principles.

**D. Arbitration agreement.**

(1) An arbitration agreement must:

- (a) be in a record signed by the parties;
- (b) identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator; and
- (c) identify the family law dispute the parties intend to arbitrate.

(2) Except as otherwise provided in subdivision D(3), an agreement in a record to arbitrate a family law dispute that arises between the parties before, at the time, or after the agreement is made is valid and enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(3) An agreement to arbitrate a child-related dispute that arises between the parties after the agreement is made is unenforceable unless:

- (a) the parties affirm the agreement in a record after the child-related dispute arises, or
- (b) the agreement was entered during a family law proceeding and the court approved or incorporated the agreement in an order issued in the proceeding.

(4) If a party objects to arbitration on the ground the arbitration agreement is unenforceable or the agreement does not include a family law dispute, the court shall decide whether the agreement is enforceable or includes the family law dispute.

**E. Notice of Arbitration.** A party may initiate arbitration by giving notice to arbitrate to the other party in the manner specified in the arbitration agreement or, in the absence of a specified manner, under the law and procedural rules of this state, other than this rule, governing contractual arbitration.

**F. Motion for Judicial Relief.**

(1) A motion for judicial relief under this rule must be made to the court in which a proceeding is pending involving a family law dispute subject to arbitration or, if no proceeding is pending, a court with jurisdiction over the parties and the subject matter.

(2) On motion of a party, the court may compel arbitration if the parties have entered into an arbitration agreement that complies with paragraph D unless the court determines under paragraph K that the arbitration should not proceed.

(3) On motion of a party, the court shall terminate arbitration if it determines that:

- (a) the agreement to arbitrate is unenforceable;
- (b) the family law dispute is not subject to arbitration; or
- (c) under Paragraph K, the arbitration should not proceed.

(4) Unless prohibited by an arbitration agreement, on motion of a party, the court may order consolidation of separate arbitrations involving the same parties and a common issue of law or fact if necessary for the fair and expeditious resolution of the family law dispute.

**G. Qualification and Selection of Arbitrator.**

(1) Except as otherwise provided in subdivision G(2), unless waived in a record by the parties, an arbitrator must be:

(a) an attorney in good standing admitted to practice or on inactive status or a judge on retired status; and

(b) trained in identifying domestic violence and child abuse according to standards established under law of this state other than this rule for a judicial officer assigned to hear a family law proceeding.

(2) The selection of the arbitrator must be in accordance with the identification in the arbitration agreement of an arbitrator, arbitration organization, or method of selection.

(3) If an arbitrator is unable or unwilling to act or if the agreed-on method of selecting an arbitrator fails, on motion of a party, the court shall select an arbitrator.

**H. Disclosure by Arbitrator; Disqualification.**

(1) Before agreeing to serve as an arbitrator, an individual, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to affect:

(a) the impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with a party, attorney representing a party, or witness; or

(b) the arbitrator's ability to make a timely award.

(2) An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.

(3) An objection to the selection or continued service of an arbitrator and a motion for a stay of arbitration and disqualification of the arbitrator must be made under the law and procedural rules of this state, other than this rule, governing arbitrator disqualification.

(4) If a disclosure required by subdivision H(1) or (2) is not made, the court may:

(a) on motion of a party not later than 30 days after the failure to disclose is known or by the exercise of reasonable care should have been known to the party, suspend the arbitration;

(b) on timely motion of a party, vacate an award under subdivision R(1)(b); or

(c) if an award has been confirmed, grant other appropriate relief under law of this state other than this rule.

(5) If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement may select a new arbitrator or request the court to select another arbitrator as provided in paragraph G.

**I. Party Participation.**

(1) A party may:

- (a) be represented in an arbitration by an attorney;
- (b) be accompanied by an individual who will not be called as a witness or act as an advocate; and
- (c) participate in the arbitration to the full extent permitted under the law and procedural rules of this state, other than this rule, governing a party's participation in contractual arbitration.

(2) A party or representative of a party may not communicate ex parte with the arbitrator except to the extent allowed in a family law proceeding for communication with a judge.

**J. Temporary Order or Award.**

(1) Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order under A.R.S. § 25-404 and Rule 47 or 48.

(2) After an arbitrator is selected:

- (a) the arbitrator may make a temporary award under A.R.S. § 25-404 and Rule 47 or 48; and
- (b) if the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, on motion of a party, the court may enter a temporary order.

(3) On motion of a party, before the court confirms a final award, the court under paragraph O, Q, or R may confirm, correct, vacate, or amend a temporary award made under subdivision J(2)(a).

(4) On motion of a party, the court may enforce a subpoena or temporary award issued by an arbitrator for the fair and expeditious disposition of the arbitration.

**K. Protection of Party or Child.**

(1) In this paragraph, "protection order" means a protective order, an injunction, or other order, issued under the domestic-violence, family-violence, or stalking laws of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against, harassment of, contact or communication with, or being in physical proximity to another individual who is a party or a child under the custodial responsibility of a party.

(2) If a party is subject to a protection order or an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines:

- (a) the affirmation is informed and voluntary;
- (b) arbitration is not inconsistent with the protection order; and
- (c) reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.

(3) If an arbitrator determines that there is a reasonable basis to believe a child who is the subject of a child-related dispute is abused or neglected, the arbitrator shall terminate the arbitration of the child-related dispute and report the abuse or neglect to the Arizona Department



of Child Safety.

(4) An arbitrator may make a temporary award to protect a party or child from harm, harassment, or intimidation.

(5) On motion of a party, the court may stay arbitration and review a determination or temporary award under this paragraph.

(6) This paragraph supplements remedies available under law of this state other than this rule for the protection of victims of domestic violence, family violence, stalking, harassment, or similar abuse.

#### **L. Powers and Duties of Arbitrator.**

(1) An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.

(2) An arbitrator shall provide each party a right to be heard, to present evidence material to the family law dispute, and to cross-examine witnesses.

(3) Unless the parties otherwise agree in a record, an arbitrator's powers include the power to:

- (a) select the rules for conducting the arbitration;
- (b) hold conferences with the parties before a hearing;
- (c) determine the date, time, and place of a hearing;
- (d) require a party to provide:
  - (i) a copy of a relevant court order;
  - (ii) information required to be disclosed in a family law proceeding under law of this state other than this rule; and
  - (iii) a proposed award that addresses each issue in arbitration;
- (e) meet with or interview a child who is the subject of a child-related dispute in accordance with Rule 12;
- (f) appoint a private expert at the expense of the parties;
- (g) administer an oath or affirmation and issue a subpoena for the attendance of a witness or the production of documents and other evidence at a hearing;
- (h) compel discovery concerning the family law dispute and determine the date, time, and place of discovery;
- (i) determine the admissibility and weight of evidence;
- (j) permit deposition of a witness for use as evidence at a hearing;
- (k) for good cause, prohibit a party from disclosing information;
- (l) appoint a child's attorney, best interests attorney, or court-appointed advisor for a child at the expense of the parties in accordance with Rule 10;
- (m) impose a procedure to protect a party or child from risk of harm, harassment, or intimidation;
- (n) allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the parties; and
- (o) impose a sanction on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a family law proceeding.

(4) An arbitrator may not allow ex parte communication except to the extent allowed in a

family law proceeding for communication with a judge.

**M. Recording of Hearing.**

(1) Except as otherwise provided in subdivision M(2) or required by law of this state other than this rule, an arbitration hearing need not be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

(2) An arbitrator shall require a verbatim recording be made of any part of an arbitration hearing concerning a child-related dispute.

**N. Award.**

(1) An arbitrator shall make an award in a record, dated and signed by the arbitrator. The arbitrator shall give notice of the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, under the law and procedural rules of this state other than this rule governing notice in contractual arbitration.

(2) Except as otherwise provided in subdivision N(3), the award under this rule must state the reasons on which it is based unless otherwise agreed by the parties.

(3) An award determining a child-related dispute must state the reasons on which it is based as required by law of this state other than this rule for a court order in a family law proceeding.

(4) An award under this rule is not enforceable as a judgment until confirmed under paragraph O.

**O. Confirmation of Award.**

(1) After an arbitrator gives notice under subdivision N(1) of an award, including an award corrected under paragraph P, a party may move the court for an order confirming the award.

(2) Except as otherwise provided in subdivision O(3), the court shall confirm an award under this rule if:

(a) the parties agree in a record to confirmation; or

(b) the time has expired for making a motion, and no motion is pending, under paragraphs Q or R.

(3) If an award determines a child-related dispute, the court shall confirm the award under subdivision O(2) if the court finds, after a review of the record if necessary, that the award on its face:

(a) complies with paragraph N and law of this state other than this rule governing a child-related dispute; and

(b) is in the best interests of the child.

(4) On confirmation, an award under this rule is enforceable as a judgment.

**P. Correction by Arbitrator of Unconfirmed Award.** On motion of a party made not later than 20 days after an arbitrator gives notice under subdivision N(1) of an award, the arbitrator may correct the award:

(1) if the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;

- (2) if the award is imperfect in a matter of form not affecting the merits on the issues submitted; or
- (3) to clarify the award.

**Q. Correction by Court of Unconfirmed Award.**

(1) On motion of a party made not later than 90 days after an arbitrator gives notice under subdivision N(1) of an award, including an award corrected under paragraph P, the court shall correct the award if:

- (a) the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;
- (b) the award is imperfect in a matter of form not affecting the merits of the issues submitted; or
- (c) the arbitrator made an award on a dispute not submitted to the arbitrator and the award may be corrected without affecting the merits of the issues submitted.

(2) A motion under this paragraph to correct an award may be joined with a motion to vacate or amend the award under paragraph R.

(3) Unless a motion under paragraph R is pending, the court may confirm a corrected award under paragraph O.

**R. Vacation or Amendment by Court of Unconfirmed Award.**

(1) On motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was:
  - (i) evident partiality by the arbitrator;
  - (ii) corruption by the arbitrator; or
  - (iii) misconduct by the arbitrator substantially prejudicing the rights of a party;
- (c) the arbitrator refused to postpone a hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to paragraph L, so as to prejudice substantially the rights of a party;
- (d) the arbitrator exceeded the arbitrator's powers;
- (e) no arbitration agreement exists, unless the moving party participated in the arbitration without making a motion under paragraph F not later than the beginning of the first arbitration hearing;
- (f) the arbitration was conducted without proper notice under paragraph E of the initiation of arbitration, so as to prejudice substantially the rights of a party; or
- (g) a ground exists for vacating the award under law of this state other than this rule.

(2) Except as otherwise provided in subdivision R(3), on motion of a party, the court shall vacate an unconfirmed award that determines a child-related dispute if the moving party establishes that:

- (a) the award does not comply with paragraph N or law of this state other than

this rule governing a child-related dispute or is contrary to the best interests of the child;

(b) the record of the hearing or the statement of reasons in the award is inadequate for the court to review the award; or

(c) a ground for vacating the award under subdivision R(1) exists.

(3) If an award is subject to vacation under subdivision R(2)(a), on motion of a party, the court may amend the award if amending rather than vacating is in the best interests of the child.

(4) The court may determine a motion under subdivision R(2) or (3) based on the record of the arbitration hearing and facts occurring after the hearing or may exercise de novo review.

(5) A motion under this paragraph to vacate or amend an award must be filed not later than 90 days:

(a) after an arbitrator gives the party filing the motion notice of the award or a corrected award; or

(b) for a motion under subdivision R(1)(a), after the ground of corruption, fraud, or other undue means is known or by the exercise of reasonable care should have been known to the party filing the motion.

(6) If the court under this paragraph vacates an award for a reason other than the absence of an enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If the reason for vacating the award is that the award was procured by corruption, fraud, or other undue means or there was evident partiality, corruption, or misconduct by the arbitrator, the rehearing must be before another arbitrator.

(7) If the court under this paragraph denies a motion to vacate or amend an award, the court may confirm the award under paragraph O unless a motion is pending under paragraph Q.

**S. Clarification of Confirmed Award.** If the meaning or effect of an award confirmed under paragraph O is in dispute, the parties may:

(1) agree to arbitrate the dispute before the original arbitrator or another arbitrator; or

(2) proceed in court under law of this state other than this rule governing clarification of a judgment in a family law proceeding.

**T. Judgment on Award.**

(1) On issuing an order confirming, vacating without directing a rehearing, or amending an award under this rule, the court shall enter judgment in conformity with the order.

(2) On motion of a party, the court may order that a document or part of the arbitration record be sealed or redacted to prevent public disclosure of all or part of the record or award to the extent permitted under law of this state other than this rule.

**U. Modification of Confirmed Award or Judgment.** If a party moves under Rule 91 for modification of a confirmed award or a judgment on the award based on a fact occurring after confirmation:

(1) the parties shall proceed under the dispute-resolution method specified in the award or judgment; or

(2) if the award or judgment does not specify a dispute-resolution method, the parties may:

(a) agree to arbitrate the modification before the original arbitrator or another arbitrator; or

(b) absent agreement proceed under law of this state other than this rule governing modification of a judgment in a family law proceeding.

**V. Enforcement of Confirmed Award.**

(1) The court shall enforce an award confirmed under paragraph O, including a temporary award, in the manner and to the same extent as any other order or judgment of a court.

(2) The court shall enforce an arbitration award in a family law dispute confirmed by a court in another state in the manner and to the same extent as any other order or judgment from another state.

**W. Appeal.**

(1) An appeal may be taken under this rule from:

- (a) an order denying a motion to compel arbitration;
- (b) an order granting a motion to stay arbitration;
- (c) an order confirming or denying confirmation of an award;
- (d) an order correcting an award;
- (e) an order vacating an award without directing a rehearing; or
- (f) a final judgment.

(2) An appeal under this paragraph may be taken as from an order or a judgment in a civil action.

**X. Transitional Provision.** This rule applies to arbitration of a family law dispute under an arbitration agreement made on or after January 1, 2018. If an arbitration agreement was made before January 1, 2018, the parties may agree in a record that this rule applies to the arbitration.